



REPUBLIC OF KENYA



**Langat v Kamati (Civil Appeal E003 of 2021)
[2024] KEHC 2778 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E003 OF 2021
RL KORIR, J
MARCH 20, 2024**

BETWEEN

HILLARY KIPKORIR LANGAT APPELLANT

AND

DAVID MWANGI KAMATI RESPONDENT

*(Being an Appeal from the Judgment of the Principal Magistrate, Muleka E.
at the Principal Magistrate's Court at Sotik, Civil Suit Number 24 of 2020)*

JUDGMENT

1. The Appellant (then Plaintiff) sued the Respondent (then Defendant) for General and Special Damages that arose from a road traffic accident involving Motor Vehicle Registration Number KBL 575R which was alleged to belong to the Appellant.
2. The trial court conducted a hearing where the Appellant testified and closed his case. The Respondent did not produce any witness or evidence.
3. In its Judgment delivered on 26th January 2021, the trial court awarded the Appellant (then Plaintiff) Kshs 1,221,026/= as General and Special Damages.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 10th February 2021 and relied on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact in awarding the Appellant general damages of Kshs 1,200,000/= an amount that is manifestly low considering the very serious injury sustained by the Appellant.
 - ii. That the learned trial Magistrate erred in law and fact in failing to award costs of the artificial leg.



- iii. That the trial Magistrate erred in law and in fact in failing to give proper consideration to the Appellant's submissions and cited proper authorities on the quantum of general damages.
 - iv. That the learned trial Magistrate erred in law and in fact in departing from case law precedent binding upon the Magistrate's court as relates to the award of general damages.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify. See *Peters v Sunday Post Ltd* (1958) EA 424.

The Plaintiff's/Appellant's case.

6. Through his Complaint dated 21st April 2020, the Appellant stated that on 8th December 2019, he was a pillion passenger aboard a motor cycle when it was involved in a road traffic accident with Motor Vehicle Registration Number KBL 575R. It was the Appellant's case that the Respondent was the registered owner of the said motor vehicle.
7. It was the Appellant's case that the Respondent was negligent in causing the accident. The particulars of the negligence were stated in paragraph 4 of the Complaint. That as a result of the accident, the Appellant suffered a crush injury to the right leg that led to his leg being amputated below the knee.
8. The Appellant prayed for Special and General Damages and the costs for an artificial leg to the tune of Kshs 2,400,000/=.

The Defendant's/Respondent's Case.

9. Through his Statement of Defence dated 22nd July 2020, the Respondent denied the occurrence of the accident on 8th December 2019 and further denied that the Appellant was a pillion passenger along Ngoina-Nyamira-Kericho road. The Respondent also denied being the registered owner of Motor Vehicle Registration Number KBL 575R.
10. It was the Respondent's case that if the accident occurred then it was caused by the negligence and recklessness of the motor cycle rider. The particulars of negligence were contained in paragraph 11 of the Defence.
11. The Respondent denied that the Appellant's claim that he would require an artificial leg at the cost of Kshs 2,400,000/=, the amount being spread over his lifetime.
12. It is important to note that this Appeal was purely on quantum as parties entered into a Consent regarding liability on 3rd November 2020. Liability was apportioned in the ratio of 70:30 in favour of the Appellant. The Consent was adopted as an order of the court.
13. On 26th January 2023, this court directed that this Appeal be canvassed by way of written submissions.

The Appellant's Submissions.

14. The Appellant submitted that the award of Kshs 1,200,000/= was manifestly low. That he sustained a crush injury to his right leg that led to its amputation. The Appellant further submitted that Dr. Obed Omuyoma examined him and classified the injury as grievous harm.
15. It was the Appellant's submission that an award of Kshs 3,800,000/= was sufficient. He relied on *Kurawa Industries Limited v Dama Kiti & another* (2017) eKLR, *Abdi Werdi Abdulahi v James Royo Mungatia & another* (2019) eKLR and *Ngooro Timothy & another v Daniel Nutuga Wangechi* (2020) eKLR.



16. The Appellant submitted that the trial court failed to consider the awards in comparable cases when it arrived at its decision.
17. It was the Appellant's submission that he expressly pleaded for the cost of the artificial leg. That Dr. Obed Omuyoma examined him and found that he had sustained a permanent disability of 60% and that he would require an artificial leg to be replaced after every 3 to 5 years. It was the Appellant's further submission that the Respondent did not produce any evidence to counter this testimony.

The Respondent's Submissions.

18. The Respondent submitted that the award of Kshs 1,200,000/= as general damages was sufficient and that this court should uphold the same. That the trial court did not misapprehend the evidence and that the award was not inordinately low to warrant interference by this court.
19. It was the Respondent's submission that damages should represent a fair compensation but it should not be excessive. He submitted further that comparable injuries should be compensated by comparable awards. He relied on *Michael Owuor Obonyo v Felix Onyango Owino* (2021) eKLR
20. The Respondent submitted that an award of Kshs 800,000/= should have been sufficient compensation arguing that the Respondent's submission that the Appellant's estimation that he would need artificial legs until he was 60 years old was purely speculative. He relied on *Charles Owino Odeyo v Apollo Justus Andabwa & another* (2017) eKLR.
21. The Respondent submitted that the claim for future medical expenses was a special damage that needed to be strictly proved by evidence. That no evidence was adduced to substantiate the claim for future medical expenses and further that no medical expert testified to justify the same.
22. It was the Respondent's submission that the trial court's award of Kshs 300,000/= for the purchase of the artificial leg be upheld. It was the Respondent's further submission that this court upholds the award of Kshs 244,323/= as special damages.
23. He urged that the Appeal lacked merit and ought to be dismissed with costs.
24. I have perused and considered the Record of Appeal dated 11th February 2021, the Appellant's written submissions dated 20th February 2023 and the Respondent's written submissions dated 27th March 2023. The only issue for my determination was whether the award on general damages was inordinately low.
25. The trial court awarded the Appellant Kshs 1,200,000/= as general damages and Kshs 244,327/= as special damages.
26. The Appellant (PW1) testified that on 8th December 2019 he was involved in a road traffic accident with Motor Vehicle Registration Number KBL 575R while aboard a motor cycle. That a Good Samaritan rushed him to Kericho District Hospital where he received treatment before he was transferred to Tenwek Mission Hospital for further treatment.
27. It was the Appellant's testimony that while at Tenwek Hospital, he underwent amputation of his right leg below the knee. That he then underwent blood transfusion in the same hospital.
28. The Appellant produced a Medical Report by Dr. Obed Omuyoma dated 12th March 2020. The Report stated that the Appellant's right leg had been amputated below the knee and that he had suffered a permanent disability of 60%.



29. The Medical Report confirmed that the Appellant suffered a crush injury on his right leg that led to its amputation below the knee. This is the same injury pleaded by the Appellant in his Pleint.
30. The Respondent did not cross examine the Appellant on his injury. Further, the Respondent did not call any witness or lead any evidence to rebut or challenge the Appellant's evidence. As such, the Appellant's evidence remained uncontroverted.
31. The Court of Appeal in the case [Charterhouse Bank Limited \(under statutory management v. Frank N. Kamau](#) (2016) eKLR stated that:-

“We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendant's failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgment merely because the defendant has not testified.”

32. Similarly in [Autar Singh Bahra and Another v Raju Govindji](#) HCCC No. 548 of 1998(UR), Mbaluto J. (as he then was) held:-

“Although the Defendant has denied liability in an amended Defence and counter-claim, no witness was called to give evidence on his behalf. That means that not only does the Defence rendered by the 1st Plaintiff in support of the Plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”

33. Flowing from the above, it is my finding that the Appellant suffered a crush injury to his right leg that led to its amputation below the knee.

34. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. In the case of [Kimatu Mbuvi T/A Kimatu Mbuvi & Bros v Augustine Munyao Kioko](#) (2006) eKLR, the Court of Appeal stated that:-

“It is generally accepted by Courts that the assessment of damages in personal injury cases is a daunting task as it involves many imponderables and competing interests for which a delicate balance must be found. Ultimately the awards will very much depend on the facts and circumstances of each case. As Lord Morris stated in *H. West & Son Ltd v. Shephard* [1964]AC 326 at page 353- ‘The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion of judgment and of experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range of limits of current thought. In a case such the present it is natural and reasonable for any member of an Appellate tribunal to pose for himself the question as to what award he himself would have made. Having done so,



and remembering that in this sphere there are inevitably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment.”

35. The Appellant submitted that the award of Kshs 1,200,000/= was inordinately low and he proposed an award of Kshs 3,800,000/=. On the other hand, the Respondent asked this court to uphold the award of Kshs 1,200,000/= as it represented a fair award.

36. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. In *Odinga Jactone Ouma v Moureen Achieng Odera* (2016) eKLR, the Court of Appeal held:-

“.....In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* CA Civil Appeal No. 26 of 2013 [2014] eKLR thus:

The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”

37. The Appellant’s leg was amputated as a result of a crush injury. I have found the following cases quite helpful in terms of comparison:-

- i. In *Nelson Njihia Kimani v David Marwa & Another* (2017) eKLR, the court awarded Kshs 1,500,000/= on amputation of lower right limb with only 40% incapacity.
- ii. In *Joyce Moraa Oyaro v. Hussein Dairy Ltd.* (2016) eKLR, the court awarded Kshs 1,300,000/= as compensation for loss of a right leg by amputation. The amputee in this case was only five years old with his whole life ahead of him and therefore a long future of disability and loss of amenity occasioned by amputation of his right leg.
- iii. In *Frodak Cleaning Services & Another v Daniel Meshack Shikanga* (2017) eKLR the Court maintained an award of Kshs.1, 500,000/= for amputation above the knee.
- iv. In *John Kipkemboi & another v Morris Kedolo* (2019) eKLR, the respondent sustained injuries including amputation of the left leg below the knee, chest injury, bruises on the shoulder, back injury and crush injury. The Court awarded him Kshs 2,500,000/= as compensation.

38. I have considered the authorities above and the nature of the injury suffered by the Appellant and I find that the Kshs 1,200,000/= awarded as General Damages by the trial court was low. I have noted that the awards in the aforementioned cases were made roughly 6 or 7 years ago and that the inflation rate in the present day is not the same as it was back then.

39. Bearing that in mind, I hereby set aside the award of Kshs 1,200,000/= as general damages and substitute it with Kshs 1,800,000/= which I find to be fair and just award.

Special Damages

40. The Appellant pleaded future medical expenses. He stated that he needed to purchase an artificial leg at the cost of Kshs 300,000/= each for a period of between 3 to 5 years for his lifetime. He approximated this sum to be Kshs 2,400,000/=



41. A prayer for future medical expense is not an ordinary prayer that a court can grant in its discretion but it is a special award that must be pleaded specifically and proved. In the case of *Tracom Limited & another v Hassan Mohamed Adan* (2009) eKLR, the Court of Appeal stated: -

“...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v. Gituma* (2004) 1 EA 91, this Court, stated: -

“And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require...”

42. Further, in *Bonham Carter v. Hyde Park Hotel Ltd.* (1948) 64 T.R. 177, it was stated:-

“The plaintiffs must understand that if they bring actions for damages it is for them to prove damage, it is not enough to write down particulars and, so to speak, throw them at the head of the Court, saying, this is what I have lost, I ask you to give me these damages. They have to provide it.....”

43. The Medical Report by Dr. Obed Omuyoma stated that an artificial leg costs about Kshs 300,000/= and that the Appellant needed to change it after 3 to 5 years until he dies. The approximation by the Appellant that he will need Kshs 2,400,000/= was widely speculative and the same was not backed up by facts or evidence and I dismiss the same.

44. It is my finding that the award of Kshs 300,000/= for future medical expenses to be fair and just in the circumstances. I therefore uphold the award.

45. With regards to the other Special Damages, the Appellant particularized them as follows: -

Medical Report Kshs 7,000/=

P3 Form Kshs 3,000/=

Official Search Kshs 550/=

Police Abstract Kshs 200/=

Medical Expenses Kshs 233,573/=

46. I have gone through the receipts produced by the Appellant. He had attached the bundle of receipts from Tenwek Hospital to show that he incurred Kshs 233,573/= as medical expenses. The Appellant



also produced receipts from the Motor Vehicle Search and for the payment for the preparation of the Medical Report which showed he incurred Kshs 550/= and Kshs 7,000/= respectively. Therefore, the total award under this head is Kshs 241,123/=.

47. Flowing from the above, I hereby set aside the award of Kshs 244,327/= as special damages and substitute it with the award of Kshs 241,123/=.
48. The final computation is as below: -
- i. General Damages Kshs 1,800,000/=
- Less 30% Contribution Kshs 540,000/=
- Kshs 1,260,000/=
- Add Future Medical Expenses Kshs 300,000/=
- Add Special damages Kshs 241,123/=
- TOTAL Kshs 1,801,123/=.
49. In the final analysis, the trial court's award of Kshs 1,221,026/= is set aside and substituted with Kshs 1,801,123/=.
50. In the end, the Memorandum of Appeal dated 10th February 2021 is merited as the damages awarded to the Appellant is increased to Kshs 1,801,123/= The Appellant shall have costs and interest as awarded in the trial court and half the costs of this appeal.
51. Orders accordingly

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 20TH DAY OF MARCH , 2024

R. LAGAT-KORIR

JUDGE

Judgement delivered virtually in the presence of Mr. Wafula holding brief Ms. Chepkwony for the Appellant, Menjo for the Respondent and Siele (Court Assistant)

